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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Oliver BECK, et al.

Serial No.: 09/121,702

Filed: July 24, 1998

For: HEATING OR AIR CONDITIONING
SYSTEM FOR A MOTOR VEHICLE

Group Art Unit: 3743

Examiner: J. Ford

Attorney Docket No.: 16906/183

TECHNOLOGY CENTER 3700

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Assistant Commissioner for Patents
Washington, D.C. 20231

BOX - AF
Request for Reconsideration Under Rule 116

Sir:

This reply to the October 22, 1999 Final Rejection is timely filed. Accordingly, no fee is needed. The Final Rejection raises numerous issues. This reply addresses those issues.

Drawing Objection

The examiner objected to the July 16, 1999 proposal because Fig. 3 does not show bottom portions 52 and 54 shown in April 19, 1999 proposal. The reasons why the bottom portions were not added was because of the new matter objection noted in Paper No. 3:

Furthermore the changes in the overall cross-section of Figure 3, size and disposition of ducts 68, elimination of parts of the casing, pipes, etc. appears to be blatantly new matter for which applicants have provided no reasonable explanation. [Paper No. 7].

Paul E. Carter
SAC

The July 16, 1999 proposal was submitted in reply to Paper No. 7.

The examiner asks which of Figs. 3 is correct. From the standpoint of Fig. 1, which shows where Fig. 3 is cross-sectioned, the April 19, 1999 proposal appears to be more accurate. That is, as seen from Fig. 1, the mixing spaces 52, 54 extend below the control elements 38, 40. Thus, the bottom portion (52, 54) should appear similar to the top portion (68). Accordingly, applicants submit another drawing proposal, adding the bottom portion.

Regarding the examiner's comment that counsel's statement that there is no new matter cannot be rectified with the changes made in Fig. 3, the undersigned disagrees because the April 19, 1999 proposal was submitted in reply to the examiner's drawing objection for clarification purposes, whereas the July 16, 1999 proposal was submitted in reply the Paper No. 7. The undersigned still believes that the April 19, 1999 drawing proposal of Fig. 3 does not contain new matter for the reasons explained in the last reply. That is, the size, disposition of ducts 68, and eliminating parts of the casing, pipes, etc., are irrelevant to the invention being claimed, as the size and disposition of ducts 68 are not being claimed. Fig. 3 should be a schematic illustration of the mixing chambers. Accordingly, the undersigned is willing to resubmit the April 19, 1999 drawing proposal of Fig. 3 if the examiner withdraws the new matter objection.

Heiz-oder Klimaanlage für ein Kraftfahrzeug Reference

Applicants thank the examiner pointing out that a **complete** copy of this reference was not submitted. The Heiz reference was printed on two side, and only one side of this reference apparently has been submitted.

Upon closer review of this reference and the co-pending application SN. 8/965,962 identified by the examiner, the undersigned became aware that the Heiz reference indeed corresponds to the co-pending application. The Heiz reference is in fact the priority patent application of the co-pending application. Applicants submit a double-sided copy of the certified priority document of the co-pending application.

The Heiz reference was inadvertently listed in the PTO-1449 and submitted. Most importantly, the Heiz reference is not a viable prior art because it was not published until after the effective filing date of the present application. Applicants therefore urge the examiner to reconsider the rejection.

If the examiner intends to maintain the rejection based on the co-pending application, applicants will submit an English translation of the present priority application to perfect priority and antedate the co-pending application.

Art Rejection

Claims 1, 3-9, and 11 were rejected under 35 U.S.C. § 103(a) as unpatentable over the Heiz reference in view of Serrato (USP 3,323,584) and/or Jorgensen (USP 2,884,228). Applicants traverse this rejection because 1) the Heiz reference is not a viable prior art

and 2) even if the Heiz reference were deemed prior art, the combination would not have taught the invention presently claimed.

First, the Heiz reference is counterpart German patent application 196 46 123.5, filed November 8, 1996 of the co-pending U.S. patent application filed November 7, 1997. The Heiz reference's publication date is May 14, 1998. See the enclosed bibliography. The present effective filing date is July 24, 1997, which is before the Heiz reference's publication date.

Second, even if we were to assume for argument sakes that the Heiz reference is prior art, the Heiz reference would not have taught four mixing chambers downstream of the heater, where each mixing chamber has movable lamellae movable to a closed position to block heated air from the heater. The Heiz reference teaches, referring to its Fig. 1, a heater 4 and a plurality of ducts 5, 6, 7, 10, and 11 positioned downstream of the heater 4. The Heiz reference uses air valves (mixing flaps) 14, 15 to direct cool air via ducts 12, 13 to control the mixture of warm/hot and cool air entering into the ducts 5, 6, 10, and 11. The Heiz reference, however, does not teach that the mixing flaps 14, 15 are movable to a closed position to block heated air from the heater. Moreover, even if the mixing flaps could be used to block the respective portion of the heater, then the respective duct would not be a mixing chamber.

The examiner relies on Serrato and/or Jorgensen for proposition that it would have been obvious to replace the air mixing flaps 14, 15, with flaps 7 taught by Serratto or a flap 41 taught by Jorgensen to permit more precise control of the mixing and reduce the size of the unit.

First, applicants submit that there would not have been any motivation for the Heiz reference to apply the flaps in the manner suggested by the examiner because that would destroy the intended operation of the Heiz reference. Note that Heiz's flaps 14 and 15 are not bypass valves or flaps. There would not have been any motivation for Heiz to bypass one or more ducts 5, 6, 10, 11. Moreover, the motivation of reducing the size of the mixing suggested by the examiner does not appear to be realistic because the Heiz reference already teaches a simple flap 14, 15 for each side. The way in which the Heiz reference directs air appears to be the simplest.

Second, even if Heiz's flaps 14, 15 were to be substituted with the flaps as taught by Jorgensen or Serratto, the combination still would not have taught four mixing chambers downstream of the heater, where each mixing chamber has movable lamellae that independently block heated air from the heater.

Claims 1, 3-9, and 11 were rejected further in view of Denk (USP 5,878,806). Denk teaches lamellae 11 that can be used to direct or block air. Nonetheless, Denk would not have alleviated the shortcomings of the Heiz reference as there is no teaching of providing four mixing chambers downstream of the heater, where each mixing chamber has lamellae that independently block heated air from the heater.

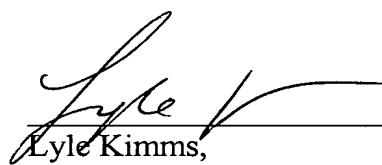
Claims 5, 6, 7, 9, and 11 were rejected further in view of one of Arnold (DE 35 42 626), Goller (DE 41 19 474), and Sarbach (USP 5,505,251). These references also would not have alleviated the shortcomings of the Heiz reference noted above.

Conclusion

Applicants submit that the pending claims patentably distinguish over the applied references and urge the examiner allow the present application. Applicants also urge the examiner to contact the undersigned if the examiner has any questions.

Respectfully submitted,

Date: January 24, 2000



Lyle Kimms, Reg. No. 34,079

FOLEY & LARDNER
3000 K Street, N.W.
Suite 500
Washington, D.C. 20007
(202) 672-5300
(202) 672-5399 (FAX)